ENROLLED

Com. Sub. for

HOUSE BILL No. 1136

(By Delegates Reid and Brum)

Passed March 7, 1992

In Effect Ninety Days From Passage
AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensed motor vehicle dealers; and mandating minimum requirements relating to the display area, office space, telephone service and public hours of operation for a motor vehicle dealer's established place of business.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires a different meaning, as used in this article:

3 (1) “New motor vehicle dealer” means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public
to be engaged in, the business in this state of selling five
or more new motor vehicles or new and used motor
vehicles in any fiscal year of a type required to be
registered under the provisions of this chapter, except,
for the purposes of this article only, motorcycles.

(2) “Used motor vehicle dealer” means every person
(other than his agents and employees, if any, while
acting within the scope of their authority or employ-
ment), engaged in, or holds himself out to the public to
be engaged in, the business in this state of selling five
or more used motor vehicles in any fiscal year of a type
required to be registered under the provisions of this
chapter, except, for the purposes of this article only,
motorcycles.

(3) “House trailer dealer” means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling new
and/or used house trailers, or new and/or used house
trailers and trailers.

(4) “Trailer dealer” means every person (other than his
agents and employees, if any, while acting within the
scope of their authority or employment), engaged in, or
who holds himself out to the public to be engaged in,
the business in this state of selling new and/or used
trailers.

(5) “Motorcycle dealer” means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling new
and/or used motorcycles.

(6) “Used parts dealer” means every person (other
than his agents and employees, if any, while acting
within the scope of their authority or employment),
engaged in, or who holds himself out to the public to be
engaged in, the business in this state of selling any used
appliance, accessory, member, portion or other part of
any vehicle.
(7) "Wrecker/dismantler/rebuilder" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom or who are in the business of rebuilding salvage motor vehicles for the purpose of resale to the public.

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include fold down camping and travel trailers.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.
(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him or her, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least twelve hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least one hundred
fifty-four square feet, and a telephone listed in the name
of the dealership. Each established place of business
shall be open to the public a minimum of twenty hours
per week at least forty weeks per calendar year with at
least ten of those hours being between the hours of nine-
thirty a.m. and eight-thirty p.m., Monday through
Saturday: Provided, however, That the requirement of
exclusive use shall be met even though (i) some new and
any used motor vehicles sold or to be sold by such dealer
or sold or are to be sold at a different location or
locations not meeting the definition of an established
place of business of a new motor vehicle dealer, if each
such location is or is to be served by other facilities and
space of such dealer for the servicing and repair of at
least one motor vehicle, adequate and suitable as
aforesaid, and each such location used for the sale of
some new and any used motor vehicles otherwise meets
the definition of an established place of business of a
used motor vehicle dealer; (ii) house trailers, trailers
and/or motorcycles are sold or are to be sold thereat, if,
subject to the provisions of section five of this article,
a separate license certificate is obtained for each such
type of vehicle business, which license certificate
remains unexpired, unsuspended and unrevoked; (iii)
farm machinery is sold thereat; and (iv) accessory,
gasoline and oil, or storage departments are maintained
thereat, if such departments are operated for the
purpose of furthering and assisting in the licensed
business or businesses.

(18) "Farm machinery" means all machines and tools
used in the production, harvesting or care of farm
products.

(19) "Established place of business" shall, in the case
of a used motor vehicle dealer, mean a permanent
location, not a temporary stand or other temporary
quarters, owned or leased by the licensee or applicant
and actually occupied or to be occupied by him, as the
case may be, which is or is to be used exclusively for
the purpose of selling used motor vehicles, which shall
have facilities and space therewith for the servicing and
repair of at least one motor vehicle, which servicing and
repair facilities and space shall be adequate and suitable
to carry out servicing and to make repairs necessary to
keep and carry out all representations, warranties and
agreements made or to be made by such dealer with
respect to used motor vehicles sold by him or her, which
shall be easily accessible to the public, shall conform to
all applicable laws of the state of West Virginia, and the
ordinances of the municipality in which it is located, if
any, which shall display thereon at least one permanent
sign, clearly visible from the principal public street or
highway nearest said location and clearly stating the
business which is or shall be conducted thereat, and
which shall have adequate facilities to keep, maintain
and preserve records, papers and documents necessary
to carry on such business and to make the same
available to inspection by the commissioner at all
reasonable times: Provided, That each established place
of business shall have a display area which may be
outside or inside or a combination thereof of at least
twelve hundred square feet which is to be used exclu-
sively for the display of vehicles which are offered for
sale by the dealer, office space of at least one hundred
forty-four square feet, and a telephone listed in the name
of the dealership. Each established place of business
shall be open to the public a minimum of twenty hours
per week at least forty weeks per calendar year with at
least ten of those hours being between the hours of nine-
thirty a.m. and eight-thirty p.m., Monday through
Saturday: Provided, however, That if a used motor
vehicle dealer has entered into a written agreement or
agreements with a person or persons owning or operat-
ing a servicing and repair facility or facilities adequate
and suitable as aforesaid, the effect of which agreement
or agreements is to provide such servicing and repair
services and space in like manner as if said servicing
and repair facilities and space were located in or on said
dealer's place of business, then, so long as such an
agreement or agreements are in effect, it shall not be
necessary for such dealer to maintain such servicing and
repair facilities and space at the place of business in
order for such place of business to be an established
place of business as herein defined: Provided further,
That the requirement of exclusive use shall be met even though (i) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (ii) farm machinery is sold thereat; and (iii) accessory, gasoline and oil, or storage departments are maintained thereat, if such depart-
ments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(20) “Established place of business” shall, in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times.

(21) “Manufacturer” means every person engaged in the business of reconstructing, assembling or reassembling vehicles with a special type body required by the purchaser if said vehicle is subject to the title and registration provision of the code.

(22) “Transporter” means every person engaged in the business of transporting vehicles to or from a manufact-
ing, assembling or distributing plant to dealers or sales agents of a manufacturer, or purchasers.

(23) “Recreational vehicle dealer” means every person
other than his agents and employees, if any, while
acting within the scope of their authority or employ-
ment), engaged in, or who holds himself out to the public
to be engaged in, the business in this state of selling new
and/or used recreational vehicles.

(24) "Motorboat" means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not such motor is the principal
source of propulsion, but shall not include a vessel which
has a valid marine document issued by the bureau of
customs of the United States government or any federal
agency successor thereto.

(25) "Motorboat trailer" means every vehicle designed
for or ordinarily used for the transportation of a
motorboat.

(26) "All-terrain vehicle" (ATV) means any motor
vehicle designed for off-highway use and designed for
operator use only with no passengers, having a seat or
saddle designed to be straddled by the operator, and
handlebars for steering control.

(27) "Travel trailer" means every vehicle, mounted on
wheels, designed to provide temporary living quarters
for recreational, camping or travel use of such size or
weight as not to require special highway movement
permits when towed by a motor vehicle and of gross
trailer area less than four hundred square feet.

(28) "Fold down camping trailer" means every vehicle
consisting of a portable unit mounted on wheels and
constructed with collapsible partial sidewalls which fold
for towing by another vehicle and unfold at the camp
site to provide temporary living quarters for recrea-
tional, camping or travel use.

(29) "Motor home" means every vehicle, designed to
provide temporary living quarters, built into an integral
part of or permanently attached to a self-propelled
motor vehicle, chassis or van including: (1) Type A
motor home built on an incomplete truck chassis with
the truck cab constructed by the second stage manufac-
turer; (2) Type B motor home consisting of a van-type
vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(31) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.

(32) "Major component" means any one of the following subassemblies of a motor vehicle: (i) Front clip assembly consisting of fenders, grille, hood, bumper and related parts; (ii) engine; (iii) transmission; (iv) rear clip assembly consisting of quarter panels and floor panel assembly; or (v) two or more doors.

(b) Under no circumstances whatever shall the terms "new motor vehicle dealer," "used motor vehicle dealer," "house trailer dealer," "trailer dealer," "recreational vehicle dealer," "motorcycle dealer," "used parts dealer" or "wrecker/dismantler/rebuilder" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term
“trailers” shall have the meaning ascribed to it in subsection (a) of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the _____ day of April, 1992.

Governor